IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3130 OF 2005

M/s.G.S.Associates & Anr. : Petitioners

(Orig.Defendant nos.1&2)

V/s.

Shri Sandeep Murlidhar Raut & Ors. : Respondents

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Mr.A.V.Anturkar for Mrs.Vinita V. Bakre-Shastry for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

June 8, 2005.

P.C.:

1. This petition is against the order dated 1.4.2005 below exh.60 passed by the Executing Court. By the impugned order, the learned Executing Court has refused to appoint a Commissioner. It appears from the order that the petitioners against whom a decree for specific performance for sale of a flat has been passed have raised an issue about the identification of the flat which they agreed to sell. The Court, therefore, has framed the following point for determination:-

"1) Is it proved that the description of suit flat given by the D.H. in Exh.1 is correct? If not what is the correct description of suit flat?"

2. In the course of execution, the petitioners applied for appointment of a Commissioner since, according to the petitioners, the Commissioner would be able to identify the flat which the decree-holder agreed to purchase and the petitioners agreed to sell. According to the petitioners, it is flat no.16 in ‘B’ wing and not in ‘B’ building. The Executing Court has observed that the question as to where i.e. in which wing the suit property was agreed to be sold is located, cannot be determined on the basis of commission and can be determined only on the basis of documents placed on record such as agreement to sell the flat, etc. There is no infirmity in this observation of the learned Executing Court nor does the order suffer from any error of law apparent on the face of the record. The Executing Court has also observed that the petitioners have filed an affidavit of evidence about the witness who failed to turn up for cross-examination. The Executing Court has, therefore, expressed that the petitioners are trying to prolong the matter one way or

the other. In the circumstances, there is no reason to interfere.

3. Accordingly, the petition is dismissed.

Sd/-

S.A. BOBDE, J.